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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,082	12/02/2003	Joseph R. Moody		2721

7590 04/28/2005
Mr. Joseph Moody
738 Natures Hammock Drive
Jacksonville, FL 32259

EXAMINER

CLEMENT, MICHELLE R

ART UNIT PAPER NUMBER

3641

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,082	Applicant(s) MOODY ET AL.	
	Examiner Michelle (Shelley) Clement	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,8-11,14,17-21 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,12,13,15,16 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/2/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Mounting assembly coupled to the grip

- a. mounting assembly detachably coupled to the grip;
- b. mounting assembly fixedly coupled to the grip;

Prevention of rotation comprising

- c. groove in piston;
- d. groove in grip portion;

Attachment of Feet

- e. feet being integral with the legs;
- f. feet being detachable from the legs;

Thickness of Feet

- g. feet having a fixed thickness;
- h. feet having a variable thickness;

Number of Legs

- i. bipod (2 legs);
- j. more than 2 legs.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 2 and 13 appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Joseph Moody on 4/8/05 a provisional election was made without traverse to prosecute the invention of species b, c, e, g, and i, claims 1, 2, 5-7, 12, 13, 15, 16, and 22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 4, 8-11, 14, 17-21, and 23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings /Specification

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the means for prevention of rotation must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

5. The disclosure/drawings are objected to because of the following informalities: The specification and drawings should carefully be reviewed to insure that a single reference number consistently refers to the same element throughout the entire specification. The specification makes reference to Figures 1-6, yet in the drawings only Figures 1-5 are shown. Appropriate correction is required.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 14, 29, and 43.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Where the written description only implicitly or inherently sets forth the structure, materials, or acts corresponding to a means-plus-function, applicant must clarify the disclosure to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, or acts perform the function recited in the claim elements and equivalents thereof. (See MPEP 2181). Correction of the following is required: applicant must clarify the disclosure to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, or acts perform the means for attachment, deployment means, retention means, means for spreading, means for prevention of rotation, and means for retaining recited in the claim elements and equivalents thereof.

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet **within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 1 recites the limitation "said grip" in line 5. There is insufficient antecedent basis for this limitation in the claim, since applicant has previously claimed both a "fore grip" and a "grip portion" and it is not clear which applicant is referring to as "said grip".

12. Claim 2 recites the limitation "the grip portion" in line 4. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 13 recites the limitation "the grip portion" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Garand (US Patent # 2,489,283). Garand discloses a grip which can be mounted to a firearm to stabilize the firearm, the grip comprising a grip portion, a means for attachment to a firearm, a collapsible and concealable bipod contained within a recess inside the grip, deployment means for deployment of the bipod from within the foregrip, the bipod coupled to the means for deployment and retention means to retain the deployment means within the fore grip upon activation of the deployment means.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5-7, 13, 15, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens (US Patent # 575,529) and Clyde (US Patent # 721,425). Stephens discloses a support device which can comprise two or three legs, the device comprising means for attachment (reference a) to a item needing support, the means is a mounting assembly (reference C) coupled to a grip portion (reference S) and is removably coupled to the item needing support (Figure 1); the plurality of legs are hingably coupled to a deployment mechanism and are provided with integral feet of a fixed thickness; means for spreading the legs into a locked position upon deployment from the grip portion comprising a spring mechanism (reference N); the deployment mechanism comprising a spring (reference N) and piston assembly (reference T) and a catch (reference v) attached to the piston assembly; a tubular recess (Figures 6 & 7) positioned within the grip portion for storage of the deployment mechanism and the plurality of legs; a release mechanism; and means for retaining the deployment mechanism comprising a retention ring (reference m) attached to the base of the grip; and means for prevention of rotation of the deployment mechanism upon activation of the release mechanism (references v & s). Although Stephens does not expressly disclose the means for spreading the legs into a locked position upon deployment from the grip portion comprising a spring mechanism positioned between the legs or the release mechanism comprising a spring release mechanism, Clyde does. Clyde

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teaches an adjustable support comprising a plurality of legs deployed from within a recess of a grip wherein the means for spreading the legs into a locked position upon deployment comprises a spring mechanism (reference 17) positioned between the legs and the release mechanism comprising a spring release mechanism (references 9, 10) positioned within the grip interfacing with a catch (reference 12 & 13). Stephens and Clyde are analogous art because they are from similar problem solving areas: multi-leg supports. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the spreading means and release mechanism as taught by Clyde with the support as taught by Stephens. The suggestion/motivation for doing so would have been to obtain a support that could be quickly deployed. Although Stephens does not expressly disclose the support for mounting to a firearm for stabilizing a firearm, it is noted that the support of Stephens could be used for mounting to a firearm and could be used for stabilizing the firearm. It is further noted that the [a) statements of intended use or field of use, b) "adapted to" or "adapted for" clauses, c) "wherein" clauses, or d) "whereby"] clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

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Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Stephens and Clyde disclose the claimed invention except for the tubular recess within the grip portion having the protrusion and the piston be provided with the recess that interfaces with the protrusion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the protrusion and recess, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

17. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens and Clyde as applied to claim 2 above, and further in view of Kopman et al. (US Patent # 6,487,807). Although neither Stephens nor Clyde expressly disclose the grip provided with a plurality of annular grooves extending around the circumference of the grip, Kopman et al. does. Kopman et al. teaches a multi-leg support device having a plurality of annular grooves extending around the circumference of the grip (Figure 3). Kopman et al., Stephens and Clyde are analogous art because they are from similar problem solving areas: multi-leg supports. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the grooves as taught by Kopman et al. with the support of Stephens and Clyde. The suggestion/motivation for doing so would have been to obtain a support that was lighter weight because it had less material.

Conclusion

18. A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

19. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent. Applicant may request help from the examiner in drafting claims that are considered by the examiner to patentably distinguish over the art of record in this application.

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hilderbrand (US Patent # 5,438,786), Michio (US Patent # 4,121,799), Nakatani (US Patent # 3,632,073), Ogawa et al. (US Patent # 5,384,609), Desch et al. (US Patent # 6,289,622), Brown (US Patent # 5,345,706), Rudolf (US Patent # 4,545,660), Breer (US Patent # 2,763,456), and Loup et al. (French Patent 2,623,595).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shelley Clement